

§ 239.63 Post-conversion.

(a) *Management stock benefit plans.* (1) During the 12 months after the conversion, the resulting stock holding company may implement a stock option plan (Option Plan), an employee stock ownership plan or other tax-qualified employee stock benefit plan (collectively, ESOP), and a management recognition plan (MRP), provided the resulting stock holding company meets all of the following requirements.

(i) The resulting stock holding company discloses the plans in the proxy statement and offering circular and indicates in the offering circular that there will be a separate shareholder vote on the Option Plan and the MRP at least six months after the conversion. No shareholder vote is required to implement the ESOP. The ESOP must be tax-qualified.

(ii) The Option Plan does not exceed more than ten percent of the number of shares that the resulting stock holding company issued in the conversion.

(iii)(A) The ESOP and MRP do not exceed, in the aggregate, more than ten percent of the number of shares that the resulting stock holding company issued in the conversion. If the resulting stock holding company has tangible capital of ten percent or more following the conversion, the Board may permit the ESOP and MRP to represent, in the aggregate, up to 12 percent of the number of shares issued in the conversion; and

(B) The MRP does not exceed more than three percent of the number of shares that the resulting stock holding company issued in the conversion. If the resulting stock holding company has tangible capital of ten percent or more after the conversion, the Board may permit the MRP to represent up to four percent of the number of shares that the resulting stock holding company issued in the conversion.

(iv) No individual receives more than 25 percent of the shares under any plan.

(v) The directors who are not the officers do not receive more than five percent of the shares of the MRP or Option Plan individually, or 30 percent of any such plan in the aggregate.

(vi) The shareholders approve each of the Option Plan and the MRP by a majority of the total votes eligible to be

cast at a duly called meeting before the resulting stock holding company establishes or implements the plan. The resulting stock holding company may not hold this meeting until six months after the conversion.

(vii) When the resulting stock holding company distributes proxies or related material to shareholders in connection with the vote on a plan, the resulting stock holding company states that the plan complies with Board regulations and that the Board does not endorse or approve the plan in any way. The resulting stock holding company may not make any written or oral representations to the contrary.

(viii) The resulting stock holding company does not grant stock options at less than the market price at the time of grant.

(ix) The resulting stock holding company does not fund the Option Plan or the MRP at the time of the conversion.

(x) The plan does not begin to vest earlier than one year after shareholders approve the plan, and does not vest at a rate exceeding 20 percent per year.

(xi) The plan permits accelerated vesting only for disability or death, or if the resulting stock holding company undergoes a change of control.

(xii) The plan provides that the executive officers or directors must exercise or forfeit their options in the event the institution becomes critically undercapitalized under the applicable regulatory capital requirements, is subject to Board enforcement action, or receives a capital directive under § 263.83 of this chapter.

(xiii) The resulting stock holding company files a copy of the proposed Option Plan or MRP with the Board and certifies to the Board that the plan approved by the shareholders is the same plan that the resulting stock holding company filed with, and disclosed in, the proxy materials distributed to shareholders in connection with the vote on the plan.

(xiv) The resulting stock holding company files the plan and the certification with the Board within five calendar days after the shareholders approve the plan.

(2) The resulting stock holding company may provide dividend equivalent

rights or dividend adjustment rights to allow for stock splits or other adjustments to the stock in the ESOP, MRP, and Option Plan.

(3) The restrictions in paragraph (a)(1) of this section do not apply to plans implemented more than 12 months after the conversion, provided that materials pertaining to any shareholder vote regarding such plans are not distributed within the 12 months after the conversion. If a plan adopted in conformity with paragraph (a)(1) of this section is amended more than 12 months following the conversion, the shareholders must ratify any material deviations to the requirements in paragraph (a)(1) of this section.

(b) *Restrictions on the sale of conversion shares by directors, officers, and their associates.* (1) Directors and officers who purchase conversion shares may not sell the shares for one year after the date of purchase, except that in the event of the death of the officer or director, the successor in interest may sell the shares.

(2) The resulting stock holding company must include notice of the restriction described in paragraph (b)(1) of this section on each certificate of stock that a director or officer purchases during the conversion or receives in connection with a stock dividend, stock split, or otherwise with respect to such restricted shares.

(3) The resulting stock holding company must instruct the stock transfer agent about the transfer restrictions in this section.

(4) For three years after the resulting stock holding company converts, the officers, directors, and their associates may purchase stock of the resulting stock holding company only from a broker or dealer registered with the Securities and Exchange Commission. However, the officers, directors, and their associates may engage in a negotiated transaction involving more than one percent of the outstanding stock, and may purchase stock through any of the management or employee stock benefit plans.

(c) *Repurchase of conversion shares.* (1) The resulting stock holding company may not repurchase its shares in the first year after the conversion except:

(i) In extraordinary circumstances, the resulting stock holding company may make open market repurchases of up to five percent of the outstanding stock in the first year after the conversion if the resulting stock holding company files a notice under paragraph (d)(1) of this section and the Board does not disapprove the repurchase. The Board will not approve such repurchases unless the repurchase meets the standards in paragraph (d)(3) of this section, and the repurchase is consistent with paragraph (c)(3) of this section.

(ii) The resulting stock holding company may repurchase qualifying shares of a director or conduct a Board approved repurchase pursuant to an offer made to all shareholders of the stock holding company.

(iii) Repurchases to fund management recognition plans that have been ratified by shareholders do not count toward the repurchase limitations in this section. Repurchases in the first year to fund such plans require prior written notification to the Board.

(iv) Purchases to fund tax qualified employee stock benefit plans do not count toward the repurchase limitations in this section.

(2) After the first year, the resulting stock holding company may repurchase the shares, subject to all other applicable regulatory and supervisory restrictions and paragraph (c)(3) of this section.

(3) All stock repurchases are subject to the following restrictions.

(i) The resulting stock holding company may not repurchase the shares if the repurchase will reduce its applicable capital levels below the amount required for the liquidation account under § 239.62(a). The resulting stock holding company must comply with the capital distribution requirements of this subpart.

(ii) The restrictions on share repurchases apply to a charitable organization under § 239.64(b). The resulting stock holding company must aggregate purchases of shares by the charitable organization with the repurchases.

(d) *Board review of repurchase of conversion shares.* (1) To repurchase stock in the first year following conversion,

other than repurchases under paragraphs (c)(1)(iii) or (c)(1)(iv) of this section, the resulting stock holding company must file a written notice with the appropriate Reserve Bank. The resulting stock holding company must provide the following information:

- (i) The proposed repurchase program;
- (ii) The effect of the repurchases on the regulatory capital and other capital levels; and
- (iii) The purpose of the repurchases and, if applicable, an explanation of the extraordinary circumstances necessitating the repurchases.

(2) The resulting stock holding company must file the notice with the appropriate Reserve Bank at least thirty days before the resulting stock holding company begins the repurchase program. The Board may extend its review of the notice for an additional sixty days.

(3) The resulting stock holding company may not repurchase the shares if the Board objects to the repurchase program. The Board will not object to the repurchase program if:

- (i) The repurchase program will not adversely affect the financial condition of the resulting savings association;
- (ii) The resulting stock holding company submits sufficient information to evaluate the proposed repurchases;
- (iii) The resulting stock holding company demonstrate extraordinary circumstances and a compelling and valid business purpose for the share repurchases; and
- (iv) The repurchase program would not be contrary to other applicable regulations.

(e) *Declaring and paying dividends following conversion.* The resulting stock holding company may declare or pay a dividend on its shares after it converts if:

- (1) The dividend will not reduce the regulatory capital below the amount required for the liquidation account under § 239.62(a);
- (2) The resulting stock holding company complies with all applicable regulatory capital requirements after it declares or pays dividends;
- (3) The resulting stock holding company complies with the capital distribution requirements under this subpart; and

(4) The resulting stock holding company does not return any capital, other than ordinary dividends, to purchasers during the term of the business plan submitted with the conversion.

(f) *Eligibility to acquire shares after conversion.* (1) For three years after the resulting stock holding company converts, no person may, directly or indirectly, acquire or offer to acquire the beneficial ownership of more than ten percent of any class of the equity securities without the Board's prior written approval. If a person violates this prohibition, the resulting stock holding company may not permit the person to vote shares in excess of ten percent, and may not count the shares in excess of ten percent in any shareholder vote.

(2) A person acquires beneficial ownership of more than ten percent of a class of shares when he or she holds any combination of the stock or revocable or irrevocable proxies under circumstances that give rise to a conclusive control determination or rebuttable control determination under §§ 238.21(a) and (d) of this chapter. The Board will presume that a person has acquired shares if the acquiror entered into a binding written agreement for the transfer of shares. For purposes of this section, an offer is made when it is communicated. An offer does not include non-binding expressions of understanding or letters of intent regarding the terms of a potential acquisition.

(3) Notwithstanding the restrictions in this section:

(i) Paragraphs (f)(1) and (f)(2) of this section do not apply to any offer with a view toward public resale made exclusively to the resulting stock holding company, to the underwriters, or to a selling group acting on behalf of the resulting savings association.

(ii) Unless the Board objects in writing, any person may offer or announce an offer to acquire up to one percent of any class of shares. In computing the one percent limit, the person must include all of his or her acquisitions of the same class of shares during the prior 12 months.

(iii) A corporation whose ownership is, or will be, substantially the same as the ownership may acquire or offer to acquire more than ten percent of the common stock, if it makes the offer or

acquisition more than one year after the resulting stock holding company converts.

(iv) One or more of the tax-qualified employee stock benefit plans may acquire the shares, if the plan or plans do not beneficially own more than 25 percent of any class of shares of the resulting savings association in the aggregate.

(v) An acquiror does not have to file a separate application to obtain Board approval under paragraph (f)(1) of this section, if the acquiror files an application under part 238 of this chapter that specifically addresses the criteria listed under paragraph (f)(4) of this section and the resulting stock holding company does not oppose the proposed acquisition.

(4) The Board may deny an application under paragraph (f)(1) of this section if the proposed acquisition:

- (i) Is contrary to the purposes of this subpart;
 - (ii) Is manipulative or deceptive;
 - (iii) Subverts the fairness of the conversion;
 - (iv) Is likely to injure the resulting stock holding company;
 - (v) Is inconsistent with the plan to meet the credit and lending needs of the proposed market area;
 - (vi) Otherwise violates laws or regulations; or
 - (vii) Does not prudently deploy the conversion proceeds.
- (g) *Additional requirements that apply following conversion.* After conversion, the resulting stock holding company must:

- (1) Promptly register the shares under the Securities Exchange Act of 1934 (15 U.S.C. 78a–78jj, as amended). The resulting stock holding company may not deregister the shares for three years.
- (2) Encourage and assist a market maker to establish and to maintain a market for the shares. A market maker for a security is a dealer who:
 - (i) Regularly publishes bona fide competitive bid and offer quotations for the security in a recognized inter-dealer quotation system;
 - (ii) Furnishes bona fide competitive bid and offer quotations for the security on request; or

(iii) May effect transactions for the security in reasonable quantities at quoted prices with other brokers or dealers.

(3) Use the best efforts to list the shares on a national or regional securities exchange or on the National Association of Securities Dealers Automated Quotation system.

(4) File all post-conversion reports that the Board requires.

§ 239.64 Contributions to charitable organizations.

(a) *Forming a charitable organization as part of a conversion.* When a mutual holding company converts to the stock form, it may form a charitable organization. Its contributions to the charitable organization are governed by the requirements of paragraphs (b) through (f) of this section.

(b) *Donating conversion shares or conversion proceeds to a charitable organization.* Some of the conversion shares or proceeds may be contributed to a charitable organization if:

- (1) The plan of conversion provides for the proposed contribution;
- (2) The members approve the proposed contribution; and
- (3) The IRS either has approved, or approves within two years after formation, the charitable organization as a tax-exempt charitable organization under the Internal Revenue Code.

(c) *Member approval of charitable contributions.* At the meeting to consider conversion of the mutual holding company, the members must separately approve by at least a majority of the total eligible votes, a contribution of conversion shares or proceeds. If the mutual holding company has a subsidiary holding company with minority shareholders, or if the subsidiary savings association has minority shareholders, and the mutual holding company is adding a charitable contribution as part of a second step stock conversion, it must also have the minority shareholders separately approve the charitable contribution by a majority of their total eligible votes.

(d) *Charitable organization contribution limits.* A reasonable amount of conversion shares or proceeds may be contributed to a charitable organization, if the contribution will not exceed limits